

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 09-N-12464
)
SCOTT G. BAKER) DECISION AND ORDER OF
) INACTIVE ENROLLMENT
)
Member No. 187710)
)
A Member of the State Bar.)

INTRODUCTION

Respondent Scott G. Baker was charged with a single count of misconduct of willfully failing to comply with rule 9.20 of the California Rules of Court as ordered by the California Supreme Court. Respondent failed to participate in this case either in-person or through counsel and his default was entered. The State Bar was represented by Deputy Trial Counsel Wonder Liang. The court finds by clear and convincing evidence that respondent is culpable of the charged violation. In view of respondent’s misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

PROCEDURAL HISTORY

The notice of disciplinary charges (NDC) in this case was filed on June 3, 2009, and was properly served on respondent on the same date. Respondent did not file an answer or otherwise participate in the case and his default was entered on August 5, 2009.¹ The matter was taken

¹ As detailed in the declaration attached to the State Bar’s motion for entry of default, in addition to service of the NDC by certified mail, the State Bar took several other reasonable steps to notify respondent of this proceeding. (See *Jones v. Flowers* (2006) 547 U.S. 220.)

under submission for decision on August 26, 2009, after the State Bar waived a hearing and submitted a brief on the issues of culpability and discipline.

FINDINGS AND CONCLUSIONS

Pursuant to rule 200(d)(1)(A) of the Rules of Procedure of the State Bar, upon entry of default the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. Accordingly, the court adopts the facts alleged in the NDC as its factual findings. Briefly, those facts show that respondent was admitted to the practice of law in the State of California on March 24, 1997, and has been a member since then.

By order filed on October 24, 2008, as amended by order filed on February 9, 2009, the California Supreme Court suspended respondent from the practice of law for one year, stayed execution of that suspension on conditions, including actual suspension for a minimum of 30 days and until he made certain specified restitution. (Supreme Court case no. S166101; State Bar Court case no. 07-O-12155.) The Supreme Court order included a requirement that, if his actual suspension exceeded 90 days, respondent comply with rule 9.20 of the California Rules of Court² and perform the acts specified in subdivisions (a) and (c) of the rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order.

The Supreme Court order became effective on November 23, 2008, and at all times thereafter remained in full force and effect. Respondent's actual suspension exceeded 90 days and he was therefore required to comply with subdivision (a) of rule 9.20 no later than March 23, 2009, and with subdivision (c) of the rule no later than April 2, 2009. Rule 9.20(c) mandates that a member "file with the Clerk of the State Bar Court an affidavit showing that he . . . has fully

² All further references to "rules" are to these rules unless otherwise noted.

complied with those provisions of the order entered under this rule.” Respondent did not file the affidavit required by rule 9.20(c).

The term “willful” in the context of rule 9.20 does not require bad faith or actual knowledge of the provision which is violated. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 9.20. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341-342.) Based on the foregoing, the court concludes that respondent willfully failed to comply with rule 9.20, as ordered by the Supreme Court on October 24, 2008.

MITIGATING AND AGGRAVATING CIRCUMSTANCES

No mitigating circumstances have been shown. In aggravation, respondent has been disciplined on two prior occasions. The first is the discipline underlying the October 24, 2008, Supreme Court order in this case. In a single client matter, respondent failed to refund promptly an unearned advanced fee of \$1,750. Respondent did not participate in this prior proceeding and his default was entered. In mitigation in this prior case, respondent had practiced law for 10 years without discipline. In aggravation in this prior case, respondent failed to participate in the discipline proceeding before the entry of his default.

In the second prior discipline case, respondent was suspended from the practice of law for two years, execution of which was stayed on conditions, including a minimum of one year actual suspension and until he made certain specified restitution. This discipline was imposed by Supreme Court order filed June 30, 2009, in case number S172640. (State Bar case no. 07-O-13461.) In a single client matter, respondent failed to perform services competently, failed to communicate with his client, improperly withdrew from employment and failed to update his

membership address. Respondent again failed to participate in the discipline case and his default was entered. No mitigating circumstances were proven in this prior case. In aggravation, respondent had a prior record of discipline; he committed multiple acts of wrongdoing; he demonstrated indifference toward rectification of the consequences of his misconduct; and he failed to participate in the disciplinary proceeding before the entry of his default.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std 1.3, Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.) Rule 9.20(d) states, in pertinent part: “A suspended member’s willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation.”

Respondent’s willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *Lydon v. State Bar, supra*, 45 Cal.3d at p. 1188; *Powers v. State Bar, supra*, 44 Cal.3d at p. 342.) A violation of the rule undermines the critical prophylactic function of ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.) Moreover, failing to appear and participate in this case shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.)

Respondent's current misconduct, his prior discipline and his failure to participate in any of the disciplinary proceedings filed against him demonstrate his inability or unwillingness to comply with his professional obligations. As a consequence, his disbarment is necessary to protect the public, the courts and the legal community; to maintain high professional standards; and to preserve public confidence in the legal profession.

RECOMMENDATION

It is recommended that respondent Scott G. Baker be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys. The court further recommends that respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Scott G. Baker, State Bar number 187710, be involuntary enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order. (Rule 220(c), Rules Proc. of State Bar.)

Dated: November _____, 2009

LUCY ARMENDARIZ
Judge of the State Bar Court